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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RANDY A. HALL, No. C-11-3397 TEH (PR)

Plaintiff, ORDER OF SERVICE

v.

SALINAS VALLEY STATE PRISON, et  
al.,

Defendants.

/

Plaintiff, a prisoner presently incarcerated at California  
Correctional Institution in Tehachapi, California, has filed a pro  
se civil rights complaint under 42 U.S.C. § 1983 against Salinas  
Valley State Prison ("SVSP"), several SVSP officers, Chief Medical  
Officer Sepulveda California Department of Corrections and  
Rehabilitation ("CDCR") Secretary Matthew Cate, and SVSP Warden  
Anthony Hedgpeth. Plaintiff alleges that the named SVSP officers  
used excessive force against him and were indifferent to his serious  
medical needs in violation of the Eighth Amendment. Doc. #5 at 21-  
22, 23-25.

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In this Order, the Court will conduct its initial review of Plaintiff's complaint pursuant to 28 U.S.C. § 1915A.

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5                   Federal courts must engage in a preliminary screening of  
6 cases in which prisoners seek redress from a governmental entity or  
7 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
8 In its review the Court must identify any cognizable claims and  
9 dismiss any claims that are frivolous, malicious, fail to state a  
10 claim upon which relief may be granted, or seek monetary relief from  
11 a defendant who is immune from such relief. *Id.* at § 1915A(b) (1),  
12 (2).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
14 allege that a person acting under the color of state law committed a  
15 violation of a right secured by the Constitution or laws of the  
16 United States. West v. Atkins, 487 U.S. 42, 48 (1988). Pleadings  
17 filed by pro se litigants, however, must be liberally construed.  
18 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010); Balistreri v.  
19 Pacifica Police Dep’t., 901 F.2d 696, 699 (9th Cir. 1990).

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21           Whenever prison officials stand accused of using excessive  
22 physical force in violation of the Eighth Amendment, the core  
23 judicial inquiry is whether force was applied in a good-faith effort  
24 to maintain or restore discipline, or maliciously and sadistically  
25 to cause harm. Hudson v. McMillian, 503 U.S. 1, 6 (1992) (citing  
26 Whitley v. Albers, 475 U.S. 312, 317 (1986)). In determining

1 whether the use of force was for the purpose of maintaining or  
2 restoring discipline, or for the malicious and sadistic purpose of  
3 causing harm, a court may evaluate the need for application of  
4 force, the relationship between that need and the amount of force  
5 used, the extent of any injury inflicted, the threat reasonably  
6 perceived by the responsible officials, and any efforts made to  
7 temper the severity of a forceful response. See Hudson, 503 U.S. at  
8 7; see also Spain v. Procunier, 600 F.2d 189, 195 (9th Cir. 1979)  
9 (guards may use force only in proportion to need in each situation).

10 Deliberate indifference to serious medical needs violates  
11 the Eighth Amendment's proscription against cruel and unusual  
12 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). A "serious  
13 medical need" exists if the failure to treat a prisoner's condition  
14 could result in further significant injury or the "unnecessary and  
15 wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059  
16 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part  
17 on other grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133,  
18 1136 (9th Cir. 1997) (en banc). A prison official is "deliberately  
19 indifferent" if he knows that a prisoner faces a substantial risk of  
20 serious harm and disregards that risk by failing to take reasonable  
21 steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

22 Liberally construed, the complaint states a § 1983 claim  
23 for relief against defendants D. Tapia, R. Reyonoso, and H. Gonzalez  
24 in their individual capacities for the use of excessive force on  
25 Plaintiff in violation of his rights under the Eighth Amendment.  
26 Plaintiff's § 1983 claim against defendants D. Tapia, R. Reyonoso,  
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1 and H. Gonzalez in their official capacities is barred by the  
2 Eleventh Amendment. See Will v. Michigan Dep't of State Police, 491  
3 U.S. 58, 71 (1989).

4 The complaint fails to state a claim against the remaining  
5 named defendants. Plaintiff's allegations of pain and suffering  
6 resulting from Sergeant Gutierrez's treatment do not establish  
7 serious medical need and therefore fail to state an Eighth Amendment  
8 violation. McGuckin, 974 F.2d at 1059 (citing Estelle, 429 U.S. at  
9 104). Plaintiff's claim against Officer Medina does not state a  
10 § 1983 claim because Plaintiff fails to allege that Officer Medina  
11 was in any way casually connected to the deprivation of a federally  
12 protected right. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir.  
13 1988); Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir.  
14 1981). Officer Medina reviewed the complaint after the alleged  
15 excessive force incident, and cancelled the complaint because  
16 Plaintiff allegedly failed to meet procedural requirements. Doc. #5  
17 at 8. Defendants Sepulveda, Warden Hedgpeth and Secretary Cate are  
18 apparently named because they are in charge of the CDCR health care  
19 system, SVSP and CDCR, respectively. However, none of these  
20 individuals were directly involved in the alleged constitutional  
21 violations. There is no respondeat superior liability under § 1983,  
22 i.e., no liability under the theory that one is responsible for the  
23 actions or omissions of an employee. Liability under § 1983 arises  
24 only upon a showing of personal participation by the defendant.  
25 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Finally,  
26 Plaintiff's claim against SVSP is not cognizable under § 1983. A

1 prison or correctional facility is not a person within the meaning  
2 of § 1983. See, e.g., Fischer v. Cahill, 474 F.2d 991, 992 (3d Cir.  
3 1973); Gilbreath v. Cutter Biological, Inc., 931 F.2d 1320, 1327  
4 (9th Cir. 1991). Moreover, the Eleventh Amendment confers immunity  
5 on state agencies from private damage actions brought in federal  
6 court. Brown v. Cal. Dep't of Corr., 554 F.3d 747, 752 (9th Cir.  
7 2009) (holding that the California Department of Corrections and  
8 California Board of Prison terms are entitled to Eleventh Amendment  
9 immunity).

10 III

11 1. The Clerk shall issue summons and the United States  
12 Marshal shall serve, without prepayment of fees, copies of the  
13 complaint in this matter and all attachments thereto (Doc. # 5)<sup>1</sup>,  
14 and copies of this order on SVSP Officers D. Tapia, R. Reynoso, and  
15 H. Gonzalez. All other named defendants are DISMISSED from this  
16 action. The Clerk also shall serve a copy of this order on  
17 Plaintiff.

18 2. To expedite the resolution of this case, the Court  
19 orders as follows:

20 a. No later than ninety (90) days from the date of  
21 this order, Defendants shall file a motion for summary judgment or  
22 other dispositive motion. A motion for summary judgment shall be  
23 supported by adequate factual documentation and shall conform in all  
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26 <sup>1</sup>Though the docket lists two complaints (Doc. #5 and Doc. #11),  
27 the complaint at Doc. #11 is a copy of the complaint at Doc. #5.  
Therefore, the Court treats the complaint docketed on July 20, 2011,  
Doc. #5, as the operative complaint.

1 respects to Federal Rule of Civil Procedure 56, and shall include as  
2 exhibits all records and incident reports stemming from the events  
3 at issue. If any Defendant is of the opinion that this case cannot  
4 be resolved by summary judgment or other dispositive motion, they  
5 shall so inform the Court prior to the date his motion is due. All  
6 papers filed with the Court shall be served promptly on Plaintiff.

7 b. Plaintiff's opposition to the dispositive motion  
8 shall be filed with the court and served upon Defendants no later  
9 than thirty (30) days after Defendants serve Plaintiff with the  
10 motion.

11 c. Plaintiff is advised that a motion for summary  
12 judgment under Rule 56 of the Federal Rules of Civil Procedure will,  
13 if granted, end your case. Rule 56 tells you what you must do in  
14 order to oppose a motion for summary judgment. Generally, summary  
15 judgment must be granted when there is no genuine issue of material  
16 fact - that is, if there is no real dispute about any fact that  
17 would affect the result of your case, the party who asked for  
18 summary judgment is entitled to judgment as a matter of law, which  
19 will end your case. When a party you are suing makes a motion for  
20 summary judgment that is properly supported by declarations (or  
21 other sworn testimony), you cannot simply rely on what your  
22 Complaint says. Instead, you must set out specific facts in  
23 declarations, depositions, answers to interrogatories, or  
24 authenticated documents, as provided in Rule 56(e), that contradict  
25 the facts shown in Defendants' declarations and documents and show  
26 that there is a genuine issue of material fact for trial. If you do  
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1 not submit your own evidence in opposition, summary judgment, if  
2 appropriate, may be entered against you. If summary judgment is  
3 granted, your case will be dismissed and there will be no trial.  
4 Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc)  
5 (App. A).

6 Plaintiff also is advised that a motion to dismiss for  
7 failure to exhaust administrative remedies under 42 U.S.C.  
8 § 1997e(a) will, if granted, end your case, albeit without  
9 prejudice. You must "develop a record" and present it in your  
10 opposition in order to dispute any "factual record" presented by the  
11 Defendant in his motion to dismiss. Wyatt v. Terhune, 315 F.3d  
12 1108, 1120 n.14 (9th Cir. 2003).

13 d. Defendants shall file a reply brief within  
14 fifteen (15) days of the date on which Plaintiff serves them with  
15 the opposition.

16 e. The motion shall be deemed submitted as of the  
17 date the reply brief is due. No hearing will be held on the motion  
18 unless the court so orders at a later date.

19 3. Discovery may be taken in accordance with the Federal  
20 Rules of Civil Procedure. No further court order is required before  
21 the parties may conduct discovery.

22 4. All communications by Plaintiff with the Court must  
23 be served on Defendants, or Defendants' counsel once counsel has  
24 been designated, by mailing a true copy of the document to  
25 Defendants or Defendants' counsel.

26 5. It is Plaintiff's responsibility to prosecute this  
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1 case. Plaintiff must keep the Court and all parties informed of any  
2 change of address and must comply with the Court's orders in a  
3 timely fashion. Failure to do so may result in the dismissal of  
4 this action pursuant to Federal Rule of Civil Procedure 41(b).

5 IT IS SO ORDERED.

6 DATED

7 04/09/2012

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THELTON E. HENDERSON  
United States District Judge

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